IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Satish Nirankari Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.382/2004)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 27-3-2004 in Sessions Case No.187/2001 passed by Shri S.S. Purohit, RHJS, Special Judge (Communal Riots/ Mansingh Murder) Jaipur.

Date of Judgment: February 19, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE R.S.CHAUHAN

Mr. Suresh Sahni] for the appellant.
Mr. Mahendra Shandilya]
Mr. R.M. Sharma]
Mr. Sudhir Jain]

Mr. M.L.Goyal, Public Prosecutor for the State.

Mr. Biri Singh Sinsinwar] for the complainant.
Mr. Kamlendra Sihag]

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated March 27, 2004 of the learned Special Judge (Communal Riots/ Mansingh Murder) Jaipur whereby Satish Nirankari, the appellant before us, was convicted and sentenced as under:-

U/s.302 IPC:

To suffer imprisonment for life and fine of Rs.500/-, in default to further suffer three months simple imprisonment.

U/s.309 IPC:

To suffer simple imprisonment for six months and fine of Rs.200/-, in default to further suffer one month imprisonment.

Sentences were ordered to run concurrently.

2. The prosecution story is woven like this:-

Informant Pramod Bhatnagar (Pw.12) handed over a written report on November 2, 1995 at Police Station Gandhi Nagar Jaipur with the averments that on the preceding day around 5.30 PM his daughter Pooja (since deceased) proceeded to attend MBA classes. When she did not return till 9 PM, he became worried. Around 10 PM he was informed by one Ashok that Pooja was admitted to SMS Hospital Jaipur. He rushed to the hospital where he found Pooja dead. On being enquired it came to his notice that it was Satish (appellant) who had killed Pooja by administering and squeezing her neck. On that report a case was registered and investigation commenced. Dead body of Pooja was subjected to autopsy, statements of witnesses were recorded, necessary memos were drawn, the appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Special Judge (Communal Riots/ Mansingh Murder) Jaipur. Charges under sections 302 and 309 IPC were framed against the appellant, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 16 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. It was stated by him that Pooja was madly in love with him and wanted to marry him but her parents did not agree for their marriage. Therefore they both decided to commit suicide and consumed Copper Sulphate. He however consumed small quantity of poison in comparison of Pooja. When Pooja

started vomiting he went out of the room for help and when he returned back, he found her hanging. He untied the noose of cable wire and she was removed to the hospital by the neighbours. No witness in defence was however examined. On hearing final submissions learned trial Judge convicted and sentenced the appellant as indicated herein above.

3. As per Post Mortem report (Ex.P-4) following ante mortem injuries were found on the dead body:-

> 1. A ligature mark 29cm x 0.5cm placed 8cm above supra sternal notch in mid line and is nearly transversly all around the neck, another ligature mark commencing from the left side of the upper border of ligature mark no one above 3cm from the mid line and is running obliquely upwards backwards laterally and disappearing in hairs just post to the left mastoid process and it is 06 cm below left ear labule
> Right side 2cm from the upper border of ligature mark no one running obliquely upwards backwards and laterally upto below right mastoid process and it is 04cm below right ear lobule the ligature mark number one is deep and upper one is not deeper brown coloured.
> 2. Hematoma 5cm x 4cm on occipital region.

Medical Board that conducted autopsy on the dead body opined that the cause of death was asphyxia due to pressure on neck with ligature.

SEQUENCE OF EVENTS:

4. We shall advert to the facts alleged by the prosecution and the sequence of events that had happened on November 1, 1995 as emerging from the prosecution evidence.

5. Deceased Pooja was a student of MA English Literature and simultaneously she joined evening classes of Management course of

American Institute. She was 23 years of age. Satish (appellant) was non-metric and Pooja fell in love with the appellant while she was teenager. She wrote a few love letters to the appellant during that period. On November 1, 1995. Pooja left her house at 5.30 PM, but she did not reach to MBA classes. Around 10 PM one Ashok informed the father of Pooja that she was admitted to the Hospital. When parents of Pooja reached hospital they found Pooja dead.

6. Statements of some important witnesses are required to be considered. Vidhya Bhushan Advocate (PW.1) in his deposition stated that the house D-9, Indrapuri belonged to his daughter Priyambda and its construction was almost complete. Key of the house usually remained near electricity meter so that labourers could do their work. Although Mahesh was not his son, he was living with him since his childhood. In the year 1990-91 he got installed Dish-antenna in the house and its controll room was at the ground floor. Satish who was a mechanic of dish-antenna associated with Mahesh in that work. On November 1, 1995 Vinod Gupta Advocate informed him over telephone around 8.30 PM that in his house at Indrapuri a girl was lying unconscious and a boy was pelting stones. Thereupon he directed Mahesh to make inquiry. Mahesh later on informed him that from his house one boy and a girl were removed to the hospital. He further stated that site-plan (Ex.P-1) was drawn in his presence and in the ground floor of his house a register, purse, wrist watch, small box of vermilion, metal glass, glass-ware containing Copper sulphate Neela-thotha, Fruit juice and many other articles were found. In cross-examination he stated that two cable wires were hanging from the railing of staircase. Garlands of rose and Glass bangles were also lying. He also stated that he had seen Pooja (deceased)

once when she came to his house with Satish. Satish wanted to marry her and he advised Satish to seek permission of their parents.

7. Mahesh Sharma (PW.2) deposed that the house D-9 Indrapuri was in the name of Vidhya Bhushan's daughter Priyambda. In that house he with the assistance of appellant installed Dish-antenna. When the business of Dis-antenna was in progress, one day the appellant came to the house with a girl whose name was Daisy. On November 1, 1995 around 9 PM Vidhya Bhushan directed him to go to the said house. On reaching the house he was informed by neighbour Vinod Gupta that a boy and a girl consumed poison and they were vomiting. Karni Singh ji thereafter took them to SMS hospital.

8. Dr.S.K.Pathak (PW.3), who conducted autopsy on the dead body of Pooja, stated that hematoma measuring 5cm x 4cm was found on occipital region. There were ligature marks on the neck that could be caused by a rope or cable wire.

9. Vinod Kumar Gupta Advocate (PW.4) deposed that plot No.D-9 adjacent to his house, belonged to Vidhya Bhushan Advocate. On November 1, 1995 around 9 PM while he was sitting on dining table he noticed that somebody was pelting stones at his house. He came out of the house and found that on plot No.D-9 a boy was vomiting. The boy told him that he and his girl-friend consumed poison. The boy made request to save him and gave telephone number of his brother. Vinod Gupta communicated information about the incident to Vidhya Bhushan and the brother of the boy. After fifteen minutes three persons came on a scooter and the girl was removed to the hospital.

10. Karni Singh Rathore Advocate (PW.13) in his deposition stated that on November 1, 1995 around 9 PM he had gone to the house of his relative Anand Singh Rathore at Satya Vihar Colony for taking dinner. As soon as he reached one boy of Video Parlour came to him and requested him to save the life of his brother. He then carried a boy and a girl to the hospital. The condition of the girl was serious.

CONTENTIONS RAISED:

11. We have heard the rival submissions. Learned counsel for the appellant vociferously criticsed the impugned judgment and canvassed as under:-

(i) The prosecution failed to establish motive behind the guilt.

(ii) Following material facts were left unnoticed by the learned trial Judge:-

(a) Pooja had left her house on November 1, 1995 at 5 PM and this fact is established by the statements of Pramila Bhatnagar (PW.9) and Pramod Bhatnagar (PW.12) but there is no evidence as to where she remained from 5 pm to 9 PM.

(b) There is no evidence from where the accused purchased Sindoor (Vermilion), Bindi and Bengals.

(c) There is no evidence as to who did the make-up.

(d) There is no evidence from where poison was purchased and who had administered poison.

(e) There is no evidence as to who were the associates of Ashok. Even Ashok had not been examined by the prosecution.

(f) Appellant also consumed poison and was admitted in hospital for

about 5 months.

(iii) There is no definite opinion of the doctor that death of Pooja was homicidal. The possibility that the death could be suicidal could not be ruled out.

(iv) As per Modi's Medical Jurisprudence & Toxicology there are 16 main distinctions in death caused by hanging or strangulation. According to medical evidence second ligature mark was ending towards back of the neck and it was oblique going upwards and ligature mark was shining. The hyoi bone was intact there was no fracture of larynx and trachea. There were not scratches, abrasions and bruises on face, mouth and ears. There were no abrasions and ecchymosed around about the edges of ligature mark. Subcutaneous tissues under ligature mark were white, hard and glistering. There were no injury to muscles of neck. The saliva was dribbling. If the death would have been by strangulation then fracture of larynx and trachea and hyoi bone was a must, there should have scratches abrasions and fingernail marks and bruises on the face neck and other parts of the body. Saliva would not have dribbling, ligature mark would have been horizontal and not oblique it would have lower down in the neck and not upwards to the chin. There should have been abrasions and ecchymoses round about the edges of the ligature marks. Subcutaneous tissues should have ecchymosed there should have been some injuries to muscles of neck carotid arteries, internal coat should have been ruptured, whereas there was no such rupture. The prosecution failed to prove that the cause of death was homicidal. Dr.S.K.Pathak (PW.3) did not say that death was homicidal in nature. Post Mortem Report (Ex.P-4) also does not say that it was homicidal.

(v) The fact that Pooja committed suicide is established from the letter (Ex.P-3) written at page 68 of Register belonged to the deceased. Pramod Kumar (Pw.12) admitted that the register belonged to Pooja. Vidhya Bhusan, Devendra Mohan and Suresh Saini established the recovery of letter (Ex.P-3).

(vi) Pooja and accused both were taken out of the house to the hospital by Sh.K.S.Rathore. There is no evidence on record to show that Pooja died earlier. If she would have died, she would not have been taken to hospital. Neither the person who took her in hospital.

(vii) It is wrong to argue that Ex.P-3 was written after death. Accused was admitted to hospital and was confined there and Vinod Kumar ASI was deputed to guard the house. He had no opportunity to plant Ex.P-3. The suicide note was drawn when Pooja was alive. There was no opportunity for appellant to plant the letter since he was confined to hospital.

(viii) So far as injury on the head of Pooja is concerned the doctor has not opined as to whether the said injury on head was antemortem or postmortem, therefore the injury on head could not be relied upon to draw a conclusion that force was used with Pooja.

(ix) Witnesses Vinod Kumar Gupta, Karni Singh Rathore and Ashok stated that the appellant was not in a fit state of mind and he was semi conscious. Therefore conduct of accused could not be a ground for conviction under section 302 IPC.

FACTUAL SITUATION:

12. Factual situation emerges from the material on record may be

summarised thus:-

(i) There is no eye witness of the occurrence and the case rests on the circumstantial evidence.

(ii) Cause of death of Pooja was asphyxia and ligature marks were found over her neck.

(iii) Appellant and deceased Pooja were alone in the house of Vidhya Bhushan Advocate, prior to the incident.

(iv) Appellant although consumed Copper sulphate, was in his full senses and he drew attention of Vinod Gupta Advocate towards the incident by pelting stones at his house.

(v) A register belonging to deceased Pooja got recovered from the place of incident. The register contained a suicidal note (Ex.P-3) allegedly written by Pooja on behalf of herself and the appellant thus:-

> "Dear Mummy Papa
> हम दोनो अपने आपको खत्म कर रहे है। हम एक दूसरे के बिना नहीं रह सकते। हमने आपको समझाने की बहुत कोशिश की लेकिन आप नहीं माने। हमारी मौत का जिम्मेदार कोई नहीं हम खुद है। हमारी आखरी इच्छा यह है कि हम दोनों को एक साथ एक ही चिता पर जलाया जाये। उम्मीद है कि आप हमारी अन्तिम इच्छा जरूर पूरी करेंगे।
> आपकी बेटी Sd/ Daisy
>
> Dear Bhaisahab
> हमारी आखरी इच्छा जरूर पूरी करना
> Sd/ Satish"

(vi) According to Pramila Bhatnagar, the mother of deceased, suicidal note was not in the hand writing of Pooja.

(vii) In the explanation under section 313 CrPC the appellant claimed innocence and stated as under:-

"मैं दोषी नहीं हूं। केस झूंठा है। पूजा उर्फ डेजी मेरे घर के पास ही रहती थी। हम दोनों के मकान पास पास ही थे। हम दोनों एक दूसरे के घर पर आते जाते रहते थे। पूजा मेरे घर पर आती रहती थी। बचपन से ही हमारी मित्रता घनिष्ठ होती चली गई। हम दोनों एक दूसरे से प्यार करने लगे थे। एक दूसरे को प्रेम पत्र भी लिखते रहते थे। Ex.D-6से Ex.D-11 पत्र पूजा ने ही मुझे लिखे थे जो मैंने पुलिस को दे दिये थे। हम दोनों शादी करना चाहते थे। लेकिन पूजा के माता पिता हमारी शादी के खिलाफ थे। दिनांक 21.10.95 को पूजा का जन्म दिन था उस दिन मैं पूजा के घर पर खाना खाने गया था वहां पर पूजा व मैंने उसके माता पिता से हमारी शादी की बात की तो उन्होंने साफ मना कर गुस्सा हो गालियां दी पूजा को मारा व मुझे जान से मारने की धमकी दी। दिनांक 1.11.95 को पूजा मेरे पास आई व बताया कि आज मेरे मम्मी पापा ने मेरे को बहुत मारा है। रोज मारते है व तुझसे मिलने को मना करते है। इस पर हम दोनों ने तय किया हम आज ही शादी कर लेंगे। हम दोनों मेरे स्कूटर पर बैठ बाजार गए, वहां से पूजा के खुद के सिंगार का सामान चूडियां बिंदिया आदि थी, साथ में शादी की मालायें खरीदी। हम दोनों ने भगवान की फोटो को साक्षी मान आपस में एक दूसरे को वर माला पहना शादी कर ली। उसके बाद पूजा ने कहा कि उसके माता पिता व रिश्तेदार बहुत खतरनाक लोग है। वे मुझे व तुम्हें जान से मार देंगे। मैं अब जिन्दा नहीं रहना चाहती। व आत्म हत्या करूंगी। मैंने समझाया व नहीं मानी। तब मैंने उसे कहा कि मैं भी तुम्हारे बिना नहीं रह सकता, अच्छा है साथ जीये व साथ मर जाये यह पूजा ने कहा। फिर उसने अपने माता पिता के नाम एक नोट लिखा, जिसके उस पर मैंने भी अपने हस्ताक्षर कर दिये व पूजा ने भी कर दिये। फिर डी-9 इन्द्रपुरी मकान पर पडे सफेदी के सामान से नीले थोथे जैसे रंग के पदार्थ का जग भर लाई। उसने मुझे भी दिया व खुद भी पी गई। मैंने थोडा पीया व मेरे मन में ख्याल आया कि आत्महत्या नहीं करनी चाहिए। फिर नहीं व गिलास में छोड दिया। इतने में डेजी की तबियत बिगडने लगी व उल्टियां करने लगी। मैं सहायता के लिए बाहर भागा। पडौस के विनोद वकील के घर का दरवाजा

बजाया, फिर भी बहुत देर बजाने पर भी कोई नहीं आया तो मैंने बाहर से उनके मकान पर पत्थर फेंके। थोडी देर बाद विनोद आया तो मैंने उसे डेजी को बचाने की प्रार्थना कर अपने भाई का फोन नम्बर दिया। उसके बाद वापिस मकान में गया तो देखा पूजा तार से लटककर तडप रही थी फिर मैंने भागकर उसे खोला तो वह जमीन पर गिर गई, मैं भी उसके पास बैठ उसे अटेन्ड करने लगा। थोडी देर बाद मेरा भाई अशोक आया, मैंने कहा कि पूजा के माता पिता को बुला लावे तब उसने कहा कि पहले इसका इलाज करवाने से बच सकती है। तब मैंने भी उचित समझा फिर हमें अस्पताल ले गये। वहां पर मैंने अशोक को पूजा के घर पर उसके माता पिता को बुलाने भेज दिया। इसके बाद मालूम नहीं क्या हुआ।"

(Emphasis supplied)

SECTION 106 EVIDENCE ACT:

13. As earlier noticed the deceased and the appellant were last seen together and rather were closeted in the lonely house of Vidhya Bhushan Advocate. Therefore it was for the appellant to explain as to how and in what manner deceased died. Section 106 of the Evidence Act provides thus:-

> "106. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

Section 106 states an exception to the general rule laid down in Section 101 that the burden of proving a fact rests on the party who substantially asserts the affirmative of the issue. Section 101 is based on the Rule INCUMBIT PROBATION QUI DICIT, NON QUINEGAT. In Shambhu Nath Vs. State of Ajmer (AIR 1956 SC 406) it was indicated that Section 106 is an exception to section 101 which lays down the general rule about the burden of proof but in a criminal case as per criminal jurisprudence the burden remains on the prosecution to prove its case

beyond reasonable doubt in order to secure the verdict of guilt. In Deonandan Vs. State (AIR 1955 SC 801) the Apex Court held that Section 106 does not cast any burden upon the accused, but when he throws no light at all upon facts which ought to be especially within his knowledge and which could support any theory or hypothesis compatible with his innocence, the court can also consider his failure to adduce any explanation in consonance with the principle.

14. In Sawai Vs. State (AIR 1974 SC 778) it was observed that the burden of proving a plea specially set up by an accused certainly lies upon him, but neither Section 103 nor Section 106 can absolve the prosecution from discharging its general or primary burden proving its case beyond reasonable doubt. It is only when prosecution has made out prima facie case the question arises of considering facts of which burden of proof may lie upon the accused.

15. Bearing the ratio propounded by the Supreme Court in mind we proceed to consider the circumstances that have been found established by the learned trial Court.

16. The first circumstance was that death of Pooja was homicidal in nature. Dr. S.K.Pathak (PW.3), Chairman of Medical Board which conducted autopsy on the dead body, did not say as to whether the death of Pooja was homicidal or suicidal. He however stated that there was antemortem hematoma measuring 5cm x 4cm on the occipital region and ligature marks found on the neck could be caused by a rope or cable wire. It is contended by learned counsel for the appellant that where the case of the

prosecution is based upon the circumstantial evidence and the circumstances so relied by the prosecution are indecisive albeit some swings in favour of homicides and yet some others in favour of suicide and specially when the prosecution version is of homicidal death and the defence version is of suicidal death in that eventuality the court has to give the benefit of doubt to the accused. Reliance is placed on State of Maharashtra Vs. Sanjay (2004)13 SCC 314 and Sharad Birdhichand Vs. State of Maharashtra (1984)4 SCC 116.

17. Learned counsel further contended that because of omission on the part of prosecution to establish the nature of death of deceased, vis-a-vis homicidal, suicidal or accidental the accused cannot be made to suffer. Reliance is placed on State of Punjab Vs. Bhajan Singh (1975)4 SCC 472 and R. Rajendran Nair Vs. State of Kerala 1998 SCC (Cri) 254.

18. We have pondered over the submissions. There is nothing on record to establish that Pooja was seen in the lonely house of Vidhya Bhushan Advocate. It was only the appellant who stated in his explanation that when he came back to the house he saw Pooja hanged:-

> "... उसके बाद वापिस मकान में गया तो देखा पूजा तार से लटककर तडप रही थी फिर मैंने भागकर उसे खोला तो वह जमीन पर गिर गई, मैं भी उसके पास बैठ उसे अटेन्ड करने लगा।

19. As already noticed the appellant gave a detailed explanation under section 313 CrPC. According to him when Pooja after consuming copper sulphate started vomiting, he went out of the house for seeking help. It is therefore difficult to believe that Pooja had such a strength that even

after consuming poison, she would have hanged herself.

20. In Modi's Medical Jurisprudence and Toxicology (23rd Edition) it is stated at page 584 that in the case of strangulation, ligature mark – Horizontal or transverse continuous, round the neck below the thyroid, the base of the groove or furrow being soft and reddish is seen.

21. In the case on hand the autopsy report of Pooja demonstrates that ligature mark above supra sterinal notch in mid line transversely all round the neck was found. Hematoma on the occipital region was also seen.

22. Their Lordships of the Supreme Court in Ram Kumar Madhu Sudan Pathak Vs. State of Gujarat (AIR 1998 SC 2732) indicated that the fact that the body of the deceased with a ligature mark around the neck was found on the cot and not hanging demolishes the theory of suicide completely.

23. We are therefore of the opinion that death of Pooja was homicidal.

SUICIDE NOTE:

24. Learned counsel for the appellant next contended that the trial court committed manifest error of law by discarding the admissibility of suicide note (Ex.P-3) without having the expert opinion in consonance with section 45 of the Evidence Act and erroneously placed burden upon the accused to prove that Ex.P-3 was scribed by the deceased. Reliance is placed on O. Bharathan Vs. K. Sudhakaran (1996)2 SCC 704.

25. It is well settled that statements made by persons who are dead are admissible as evidence of relevant facts because their evidence cannot in any other manner come on record. This is so by rule of necessity. The only rider in Section 31(1) of the Evidence Act is that they should relate to the “cause of his/ her death” or “the circumstances of the transaction which remitted in his/ her death”. The `death' may be homicidal or suicidal. The `dying declaration' is only a piece of untested evidence and must, like any other evidence, satisfy the court that what is stated therein is the unalloyed truth and that it is absolutely safe to act upon it.

26. We have incorporated alleged suicide note (Ex.P-3) in the earlier part of this judgment. The said `note' appears to have written on behalf of two persons:

> "हम दोनो अपने आपको खत्म कर रहे है। ... हमारी मौत का जिम्मेदार कोई नहीं हम खुद है।... "

As per the explanation given by the appellant the note Ex.P-3 was written by Pooja in her own hand writing and she put her signatures as `Daisy'. Concededly out of two persons on whose behalf the statement was written one is alive. Therefore in our opinion the alleged note Ex.P-3 does not come within the purview of Section 32(1) of the Evidence Act which provides as under:-

> “32.(1) When it relates to cause of death- When the statement is made by a person as to cause of his death, or as to any of the circumstance of the transaction which resulted in his death, in cases in which the cause of that person's death comes into question:
> Such statements are relevant whether the person who made

> them was or was not, at the time when they were made, under expectation of death, and whatever may be the nature of the proceeding in which the cause of his dealt comes into question."

The Note (Ex.P-3) evidently relates to the circumstances of the transaction that would result in the death of two persons and it cannot be termed as dying declaration of Pooja because another person on whose behalf the declaration was made is alive.

27. Section 67 of the Evidence Act provides that if a document is alleged to be signed or to have been written wholly or in part by any person, the signature or the hand writing of so much of the document as is alleged to be in that person's hand writing must be proved to be in his hand writing. In order to prove identity of hand writing any mode not forbidden by law can be resorted to. Two modes are indicated in Sections 45 and 47. Section 45 makes relevant the opinion of experts or persons skilled in some special branch of learning or trade or profession. But the opinion of ordinary witnesses are also sometimes admissible. Section 47 deals only with the question of identification of handwriting. By it handwriting may be proved by the opinion of any person who is acquainted with the handwriting of the person alleged to have written the document. Section 47 reads as under:-

> "47. Opinion as to handwriting when relevant:- When the court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed that it to be written or signed was or was not written or signed by that person, is a relevant fact.
>
> Explanation:- A person is said to be acquainted with the handwriting of another person when he has seen that person write or when he was received document purporting to be written by the person in answer to document written by himself or under his authority and addressed to the person, or when, in the ordinary course of business document purporting to be

written by the person have been habitually submitted to him."

28. The rule with respect to proof "EX VISU SCRIPTIONIS" is clear and settled, namely that a person who has ever seen the supposed writer of a document write, so as to have thereby acquainted a standard in his own mind of the general character of the handwriting of that party, is a competent witness to say whether he believes the handwriting of the disputed document to germane or not. Under the Evidence Act acquaintance with one's handwriting may be in three ways:-

(i) Seeing a person write;
(ii) Knowledge by correspondence;
(iii) Habitual submission of document purporting to be written by a person in the ordinary course of business.

The value of such evidence depends not merely upon the fact that the witness has seen the party write; or has corresponded with him, but also upon the extent of opportunities he has had of becoming familiar with the handwriting in question and upon his own habits, of accurate observation.

29. In the instant case Pramod Bhatnagar (PW.12), the father of Pooja, was cross examined at length. On being shown document Ex.P-3, Pramod Bhatnagar deposed that it was not in the handwriting of Pooja. Although Pramod Bhatnagar admitted that paper on which note Ex.P-3 was written, was removed from the Register Article-1 belonged to Pooja. Pramila Bhatnagar (PW.9), mother of Pooja, also stated that she was acquainted with the handwriting of Pooja and Ex.P-3 was not in the handwriting of Pooja. Manju Bhatnagar (PW.8), maternal aunt of Pooja deposed as under:-

"पूजा बहुत इन्टेलीजेन्ट लड़की थी। वह आई.ए.एस. करना चाहती थी व उस वक्त वह एम.बी.ए. फाईनल व एम.ए. इग्लिंश फाईनल में थी। पूजा की लिखावट मैं देखती रहती थी इसलिए उसकी लिखावट मैं

पहचानती हूं। प्रदर्श-3 पूजा की लिखावट में नहीं है। वह हिन्दी नहीं लिखती थी। वह अपने माता पिता को मम्मी व पापा नहीं कहती थी, जीजी व काका साहब कहती थी। उसने कभी अपने माता पिता के लिए डियर शब्द का प्रयोग नहीं किया वह हमेशा उनके लिए रेस्पेक्टेड शब्द का प्रयोग करती थी ..."

30. The testimony of Pramod Bhatnagar, Pramila Bhatnaga and Manju Bhatnagar demonstrates that they were acquainted with the handwriting of Pooja and document Ex.P-3 was not in her handwriting. Opinion of these witnesses is relevant under section 47 of the Evidence Act. We thus hold that even in the absence of opinion of Handwriting Expert the evidence adduced by the prosecution of the persons acquainted with the handwriting of Pooja can be considered in arriving at the conclusion that Ex.P-3 was not in the handwriting of Pooja.

SECTION 313 CRPC:

31. Section 313 of the Code of Criminal Procedure corresponds to Section 342 of the Code of 1898. This section is based on the principle involved the maxim audi alteram partem. The statement of an accused recorded under section 313 CrPC cannot be ignored lightly and has to be govern due weight and adequate emphasis while recording the guilt against him. Such a statement may not be a sacrosanct but certainly it deserves consideration. In State of Himachal Pradesh Vs. Wazir Chand (AIR 1978 SC 315) it was indicated by Hon'ble Supreme Court that it is obligatory on the court to question the accused on the circumstances appearing against him in evidence given under S.342 so as to enable him to explain the same. Sub-s. (3) provides that the answers given by the accused may be taken into consideration in such inquiry or trial, etc. In order to give an opportunity to the accused to explain the circumstances appearing against him in evidence, the court under S.342, is required at the close of the trial to question the

accused on such circumstances. The court had to guard against cross examination of the accused. The accused is to be questioned with regard to the circumstances appearing against him in evidence and not the inference that flows from the circumstances. The answers given by the accused have to be taken into consideration.

32. Anant Chintaman Lagu Vs. The State of Bombay (AIR 1960 SC 500) it was held that a Criminal trial of course, is not an inquiry into the conduct of an accused for any purpose other than to determine whether he is guilty of the offence charged. In this connection that piece of conduct can be held to be incriminatory which has no reasonable explanation except on the hypothesis that he is guilty. Conduct which destroys the presumption of innocence can alone be considered as material.

33. Trimukh Maroti Kirkan Vs. State of Maharashtra [JT 2006(9) SC 50] it was indicated that where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence took place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime.

34. Raj Kumar Prasad Tamarkar V. State of Bihar 2007(1) Crimes 132 (SC), the Apex Court propounded that once prosecution was able to show that at relevant time room in question was in exclusive occupation of

couple, burden lay upon respondent to show under what circumstances death was caused to his wife. Respondent did not raise any positive defence. Respondent has written a letter to deceased some time before incident wherein she was warned of serious consequences in case she raised objection to respondent and extra relation. Said letter provided a motive for crime. Weapon revolver being the weapon of attack was recovered from the room. Theory of suicide was ruled out by circumstances. When High Court failed to take into consideration relevant facts and misapplied legal principles it was fit case for exercise of jurisdiction under Article 135 of Constitution to prevent serious miscarriage of justice. Conviction and sentence of life imprisonment was liable to be restored.

35. Anthony D' Souza V. State of Karnataka, 2003(1) Crimes 100 (SC) was the case wherein it was indicated that by now it is well established principle of law that in a case of circumstantial evidence where an accused offers false answer in his examination under 313 against the established facts that can be counted as providing missing link for completing the chain.

36. In Babu s/o Raveendran Vs. Babu s/o Bahuleyan 2003(2) Apex Court Judgments 528 (SC) where accused and deceased were last seen together and rather were closeted in bedroom at about 8.30 pm. It is for accused to explain as to how deceased died and that too on account of strangulation.

CONDITIONS REQUIRED TO BE FULFILLED IN A CASE BASED ON CIRCUMSTANTIAL EVIDENCE:

37. In Sharad Birdhichand Sarda Vs. State of Maharashtra (1984)4 SCC 116, the Apex Court indicated conditions that are required to be

fulfilled in a case based on circumstantial evidence. These conditions are as under:-

> (i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely `may be' fully established;
> (ii) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty;
> (iii) the circumstances should be of a conclusive nature and tendency;
> (iv) they should exclude every possible hypothesis except the one to be proved, and
> (v) there must be chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

38. In the instant case the circumstances are of a conclusive nature and chain of evidence is so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the appellant and they show that in all human probability the criminal act had been done by the appellant. From the material on record it is established that the appellant and deceased were alone together rather were closeted in the lonely house belonging to Vidhya Bhushan Advocate. It was for the appellant to explain as to have deceased died but the explanation given by him under section 313

does not appear to be true and trustworthy. The reasons are:-

(i) This statement of appellant that Pooja herself brought Copper Sulphate from the house bearing No.D-9 Indrapuri, is highly unbelievable. Being stranger in the house of Advocate how could Pooja arrange the poison?

(ii) It is stated by the appellant that after Pooja consumed poison and started vomiting, he rushed out of the house for help and when he came back to the house he found Pooja hanged with wire. He immediately untied the wire as a result of which Pooja fell down on the floor. This statement is exfacie unbelievable. How could a lonely girl after consuming poison could gather strength to hang herself?

39. It is contended by learned counsel for the appellant that the prosecution cannot derive the mileage out of the weakness of the defence version and as per criminal prosecution has to stand on its own legs in order to secure the finding of guilt against the appellant. In the instant case the prosecution has stand on its own legs it has not derived the benefit from the weakness of the defence version. The circumstances that appellant and Pooja soon before her death, were last seen together, the death of Pooja was homicidal in nature and the appellant offered false explanation, are sufficient to establish the guilt of the appellant.

40. Learned counsel further urged that the appellant neither had any motive to kill the deceased nor had intention to see the deceased as dead for he did everything at his command to provide medical aid to the deceased. No

sane person will do such things so as to revive the losing life in the deceased and take the chance of the deceased being cured and creating evidence against himself. The conduct of appellant thus is relevant by virtue of Section 8 of the Evidence Act. It is next contended that the nature of weapon used for causing the death of the deceased by strangulation was the cable wire lying over at the place of incident, so there was no premeditation for the alleged crime, moreover, the appellant himself had consumed Copper Sulphate and battled for his life about 50 days and was convicted under section 309 IPC.

CONCLUSION:

41. It is difficult to subscribe the view canvassed by learned counsel for the appellant. The appellant undoubtedly had consumed copper sulphate and from the documents filed along with the application under section 391 CrPC in this court it appears that the appellant was admitted to the hospital for a period of 50 days. But this fact does not take the guilt of the appellant out of the purview of clause thirdly of Section 300 IPC. Taking into consideration all the facts and circumstances of the case we notice that deceased Pooja at the time of her death was a student of MA Final English Literature. Simultaneously she joined MBA Course of American University. The appellant on the other hand was a Non-matric. Pooja might have fallen in love with the appellant while she was teenager and wrote him love letters but at the age of 23 while having ambitions to become IAS Officer it cannot be believed that she wanted to marry with a non-matric. In the facts and circumstances of the case this possibility cannot be ruled out that the appellant who desperately wanted to marry Pooja took her to the lonely place and put proposal of marriage before her. Packets of vermilion and

Bindi, Polythene bag that contained make up material and garlands of roses were arranged by him. When Pooja did not agree for marriage, the appellant instead of showing his frustration to Pooja, offered her thums-up in which copper sulphate was already mixed. Pooja gulped the drink and started vomiting. When she became restless, appellant tied cable wire round her neck and pushed her head on the wall as a result of which Pooja sustained hematoma on the occipital region. He then wrote suidical note (Ex.P-3), put vermilion on her forehead and slided bangles over her wrists. Thereafter he gulped small quantity of copper sulphate and came out of the house in order to create evidence about suicidal death of Pooja. He purposely sought help of two Advocates namely Vinod Kumar Gupta and K.S.Rathore. Vinod Kumar Gupta communicated information to Vidhya Bhushan Advocate and the brother of the appellant, whereas K.S.Rathore took the appellant and Pooja to the hospital in a car. The appellant created such a situation that both the Advocates did not choose to enter the house where the incident took place.

42. We thus see no infirmity in the impugned judgment of learned trial Judge. In our opinion the guilt under section 302 and 309 IPC is proved against the appellant beyond reasonable doubt.

43. For these reasons, the appeal being devoid of merit stands dismissed.

(R.S.Chauhan),J. (Shiv Kumar Sharma)J.

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